

**§ 105-228.2. Tax upon freight car line companies.**

(a) For purposes of taxation under this section the property of freight line companies as defined is declared to constitute a special class of property. In lieu of all ad valorem taxes by either or both the State government and the respective local taxing jurisdictions, a tax upon gross earnings in the State as elsewhere defined shall be imposed.

(b) Any person or persons, joint-stock association or corporation, wherever organized or incorporated, engaged in the business of operating cars or engaged in the business of furnishing or leasing cars not otherwise listed for taxation in this State, for the transportation of freight (whether such cars be owned by such company or any other person or company), over any railway or lines, in whole or in part, within this State, such line or lines not being owned, leased or operated by such company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture, or refrigerator car or by some other name, shall be deemed a freight line company.

(c) For the purposes of taxation under this section all cars used exclusively within the State, or used partially within and without the State, and a proportionate part of the intangible values of the business as a going concern, are hereby declared to have situs in this State.

(d) Every freight line company, as hereinbefore defined, shall pay annually a sum in the nature of a tax at three per centum (3%) upon the total gross earnings received from all sources by such freight line companies within the State, which shall be in lieu of all ad valorem taxes in this State of any freight company so paying the same.

(e) The term "gross earnings received from all sources by such freight line companies within the State" as used in this Article is hereby declared and shall be construed to mean all earnings from the operation of freight cars within the State for all car movements or business beginning and ending within the State and a proportion, based upon the proportion of car mileage within the State to the total car mileage, or earnings on all interstate car movements or business passing through, or into or out of the State.

(f) Every railroad company using or leasing the cars of any freight line company shall, upon making payment to such freight line company for the use or lease, after June 30, 1943, of such cars withhold so much thereof as is designated in this section. On or before March first of each year such railroad company shall make and file with the Secretary of Revenue a statement showing the amount of such payment for the next preceding 12-month period ending December 31, and of the amounts so withheld by it, and shall remit to the Secretary of Revenue the amounts so withheld. If any railroad company shall fail to make such report or fail to remit the amount of tax herein levied, or shall fail to withhold the part of such payment hereby required to be withheld, such railroad company shall become liable for the amount of the tax herein levied and shall not be entitled to deduct from its gross earnings for purposes of taxation the amounts so paid by it to freight line companies.

It is not the purpose of this subsection to impose an unreasonable burden of accounting on railroad companies operating in this State, and the Secretary of Revenue is hereby authorized, upon the application of any railroad company, to approve any method of accounting which he finds to be reasonably adequate for determining the amount of mileage earnings by any car line company whose equipment is operated within the State by or on the lines of such railroad company. Further, if in the opinion of the Secretary of Revenue the tax imposed by this section can be satisfactorily collected direct from the freight line companies, he is hereby authorized to fix rules and regulations for such direct collection, with the authority to return at any time to the method of collection at source above provided in this subsection.

(g) Every car line company shall file such additional reports annually, and in such form and as of such date as the Secretary of Revenue may deem necessary to determine the equitable amount of tax levied under this section.

(h) Upon the filing of such reports it shall be the duty of the Secretary of Revenue to inspect and verify the same and assess the amount of taxes due from freight line companies therein named. Any freight line company against which a tax is assessed under the provisions of this Article may at any time within 15 days after the last day for the filing of reports by railroad companies, appear before the Secretary of Revenue at a hearing to be granted by the Secretary and offer evidence and argument on any matter bearing upon the validity or correctness of the tax assessed against it, and the Secretary shall review his assessment of such tax and shall make his order confirming or modifying the same as he shall deem just and equitable, and if any overpayment is found to have been made it shall be refunded by the Secretary. Provided, however that such payment if in the amount of three dollars (\$3.00) or more shall be refunded to the taxpayer within 60 days of the discovery thereof; if the amount of overpayment is less than three dollars (\$3.00) then such overpayment shall be refunded only upon receipt by the Secretary of Revenue of a written demand for such refund from the taxpayer. Provided further, that no overpayment shall be refunded irrespective of whether upon discovery or receipt of written demand if such discovery is not made or such demand is not received within three years from the filing date of the return or within six months of the payment of the tax alleged to be an overpayment, whichever date is the later.

(i) The provisions of Article 9 of this Chapter apply to this Article.

(j) The provisions of this Article shall apply to all freight line gross earnings accruing from and after June 30, 1943. (1943, c. 400, s. 8; 1957, c. 1340, s. 14; 1973, c. 476, s. 193; 1998-212, s. 29A.14(j).)